IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

WEDNESDAY, THE 22ND NOVEMBER 2006 / 1ST AGRAHAYANA 1928

CRL.A.No. 372 of 1998()

STC.1331/1995 of JUDL.MAGISTRATE OF FIRST CLASS COURT-II, KANNUR

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APPELLANT/COMPLAINANT:

KUTTIATTOOR GRAMA PANCHAYATH,(PO) CHATTUKAPPARA,
(VIA) KOODALI, REP. BY ITS SECRETARY.

BY ADV. SRI.R.PARTHASARATHY

RESPONDENT/ACCUSED:

P.SADIRI,S/O.MAMMED,VELYAMBRA,
(PO) P.R.NAGAR, KANNUR DISTRICT.

BY ADV. SRI.P.SANKARANKUTTY NAIR
SRI.T.V.AJAYAKUMAR FOR RES.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 22/11/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY, J.

CRL.APPEAL.NO.372 OF 1998 (B)

Dated this the 22nd day of November, 2006

J U D G M E N T

This appeal is filed against the order of acquittal. According to the complainant accused was the highest bidder in the auction conducted by the complainant Panchayat regarding the right to collect sand from Pavannur river for the period between 28.4.1994 and 31.3.1995. Rs.1,20,000/- was deposited and agreement was executed on 5.8.1994. The balance amount has to be paid in six instalments but after paying two instalments he committed default. It was not able to be collected. Hence complaint was filed for realising the amount in view of Rule 26 of the Kerala Panchayath Taxation and Appeal Rules 1963. Rule 26 deals with the procedure to be adopted by the Magistrate when defect is committed in paying tax. The allegation in the complaint noted in paragraph 4 is as follows:

> "The accused is willfully refusing to pay the licence fee which he had agreed to pay as per the

> agreement dated 5.8.1994. There is no special provision under the newly extracted Panchayath Raj Act or in the other law or Rules or bye-laws made there under to recover the licence fee due from the accused. So as per the 'Rules regarding demanding amounts due to Panchayath where there is no special provision, 1962', the complainant can prosecute the accused and recover the arrears of licence fee in the manner provided in the rules for the collection of taxes under the Act. By demand notice, the accused committed an offence punishable under Rule 26 of the Kerala Panchayath Taxation and Appeal Rules 1963. The complainant has got documents and witnesses to prove the case."

The complaint itself shows that unlike tax matters there is no provision in the Act for prosecuting the complaint for realising dues arising out of contract. Accused has a case that he is not liable to pay the balance amount as he was prevented from collecting sand. There is no wilfull default. Whether any amount is due to Panchayat has to be adjudicated in a civil court. Admittedly, even if the amount is due to the Panchayat, that amount is due on the basis of a contract and it will not come under the purview of Sections 210 and 284 (2) of the Kerala Panchayat Raj Act or Rule 26 of the Kerala Panchayath Taxation and Appeal Rules, 1963. Unlike a taxation matter, in criminal matters accused is only bound to answer charges and

allegations as mentioned in paragraph 4 of the complaint is not maintainable. In this connection I also refer to the decision of this Court in **Thalavoor Grama Panchayat v. Salim (2004 (3) KLT 835)** where it was held as follows:

> 7. Rule making power is as contained in S.254 of the Panchayat Raj Act, 1994. Sub-s.(i) of S.254 provides that: "The Government may, by notification in the Gazette, makes rules either prospectively or retrospectively to carry out all or any purposes of this Act". This is the general power. The rule made under this general power shall be for carrying out any of the purpose of the Act. As already mentioned above, under S.210, the Act does not envisage prosecution for default of bid amount. Therefore, the general rule making power under Section 254 does not enable to provide for prosecution to recover bid amount. Unfortunately the counsel could not point out any item under sub-r.(2) of S.254 which contains particular provision enabling the Government to prescribe rules under the new Act providing for prosecution in case of default of payment of bid amount.

Apart from the above, in Ext.D1 auction notice it is stated that sand can be taken only after executing agreement and after getting written permission. Admittedly, no such written permission was given and the case of the accused is that because of the objection raised by the people in the locality

and pendency of a writ petition agreement was executed much later but no written permission as per the auction notice was given and he was unable to take sand. Even though it was argued that no such written permission is necessary. Ext.D1 auction notice specifically stated that only after written permission sand can be taken. In any event, in view of the above contention it cannot be stated that there is willful default to attract prosecution proceedings even if the demand is akin to tax. In the above circumstances, the complaint was dismissed and accused was acquitted. On going through the evidence, I am of the view that the view taken by the trial court is a possible one and no interference is required and hence this appeal is dismissed.

J.B.KOSHY, JUDGE

prp

J.B.KOSHY, J.

CRL.APPEAL.NO.372 OF 1998 (B)

J U D G M E N T

22nd November, 2006